

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-894378 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Edward H. Furneis

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1521

Edward H. Furneis

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 21 December 1964, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS TRANSEASTERN under authority of the document above described, on 1 October 1964, Appellant assaulted and battered the Second Mate with his fist.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence only the testimony of the Second Mate.

Appellant and two other eyewitnesses testified in his defense. Appellant testified that, when he asked the Second Mate who would handle the morning lines, the Mate hit Appellant in the face with a walkie-talkie radio as Appellant put up his hands to protect his face; the Mate then ran around threatening Appellant and screaming; Appellant followed the Mate to talk to him in order to clam him down but could not catch him; the Master saw that the Second Mate had been injured in the mouth and asked Appellant why he hit the Mate; Appellant denied doing it. The other two witnesses agreed that the Mate put the radio close to or touching Appellant's face and said they saw no blow struck by Appellant.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 21 December 1964, Appellant was serving as an able seaman on board the United States TRANSEASTERN and acting under authority of his document while the ship was anchored off the

port of Karachi, Pakistan. Another ship was tied up alongside.

About 1800 on this date, the Second Mate was on the stern directing a shore gang of natives in handling the mooring lines to the ship alongside. The Mate was in contact with the Master on the bridge by means of a walkie-talkie radio. Appellant questioned the Second Mate about the handling of the lines by the shore gang rather than by the crew. When the Mate replied that Appellant's assistance was not needed, he got up from a sitting position, struck the Second Mate in the mouth with his fist, and pursued him for some distance from the stern.

The Second Mate went directly to the Master who observed that the Mate's mouth was bleeding profusely. His mouth was cut inside and a dental plate had been broken by the blow.

Appellant's prior record consists of a six months' suspension in 1958 for assault and battery, and absence without permission; a one month outright suspension plus probation in 1959 for failure to perform duties and failure to join his ship; and a warning in 1963 for absence without permission.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the findings of fact of the Examiner are in error in certain respects (which are not material to the allegations). Appellant did not strike the Second Mate or pursue him when he ran away from Appellant. The Second Mate hit Appellant with the walkie-talkie, as he and his witnesses testified, after Appellant asked the Mate a question concerning the handling of the lines.

OPINION

As a matter of credibility, the Examiner accepted as true the version of the incident as testified to by the Second Mate. This account is reflected in the above findings of fact and constitutes substantial evidence in support of the alleged offense of assault and battery.

Although Appellant's other two eyewitnesses corroborate his testimony that he did not hit the Second Mate, there is no other reasonable explanation as to how the Mate was injured by the time he reached the Master, or even why he ran away from Appellant. The facts, that the Mate ran away and his injured mouth was observed by the Master shortly thereafter, are established by Appellant's own testimony.

It might be inferred, from the defense testimony, that when Appellant raised his hands, either a hand hit the Second Mate in the mouth or his hands knocked the walkie-talkie against the Mate's mouth. But this is very unlikely because there is also evidence by the defense that the walkie-talkie was a full arm's length away from the Mate when it struck or came close to Appellant's face. Therefore, the Mate's head was such a distance from the walkie-talkie that it is highly improbable Appellant's hands accidentally caused the injury.

It is my opinion that there is no reasonable basis for rejecting the Examiner's choice as to the credibility of the witnesses. Hence, it is concluded that Appellant was guilty of the offense alleged.

Deliberate attacks on ship's officers cannot be tolerated. This offense was aggravated by the fact that the Second Mate was performing duties related to the operation of the ship at the time. The strict shipboard discipline necessary to promote safety at sea requires that the order of revocation be affirmed.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 21 December 1964, is ~~REVOKED~~ **AFFIRMED**.

W. D. SHIELDS
Vice Admiral United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 1st day of October 1965.

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